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Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment

Second session
Geneva, 2–5 June 2014
Item 6 of the provisional agenda
Review of compliance, implementation and work done by the Implementation Committee

Draft first review of implementation of the Protocol

Note by the secretariat

Summary

At its first session (Geneva, 20–23 June 2011), the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context serving as the Meeting of the Parties to the Protocol on Strategic Environmental Assessment decided that a draft review of the implementation of the Protocol based on reports by Parties would be presented at its second session for adoption (ECE/MP.EIA/SEA/2, decision V/7–I/7, para. 5).

This note presents the draft first review prepared by the secretariat with the support of a consultant. The draft review has been finalized taking into account the comments made during and after the third meeting of the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment (Geneva, 11–15 November 2013).

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol is invited to adopt the draft review through decision II/1.

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I. Introduction

1. This document presents the first review of the implementation of the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). It examines responses to a questionnaire on countries' implementation of the Protocol in the period 2010–2012.

2. This chapter describes the preparation of and the major findings from the review. Chapter II below summarizes the responses to the questionnaire regarding the legal, administrative and other measures taken by Parties to implement the Protocol. Chapter III describes the practical application of the Protocol during the period 2010–2012.

A. Preparation of the review

3. The draft first review of implementation of the Protocol has been prepared in line with the workplan adopted by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its first session (ECE/MP.EIA/SEA/2, decision V/9–I/9). Parties reported on their implementation by means of a questionnaire produced by the Implementation Committee under the Convention and the Protocol and approved by the Working Group on Environmental Impact Assessment and Strategic Environmental Assessment. Based on the completed questionnaires, the secretariat, with the assistance of a consultant, prepared the draft review set out in this document for consideration by the Working Group in November 2013 and by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol at its second session (Kyiv, 2–5 June 2014).

4. Completed questionnaires were received by 15 July 2013 from 19[1] of the 25 Parties. Bosnia and Herzegovina also provided responses, although it is not yet a Party. The completed questionnaires are available on the Convention website[2] and are reflected in this draft review.

5. Luxembourg, Montenegro, Portugal, Serbia and Slovenia failed to submit a completed questionnaire on time. The European Union (EU) is a Party to the Protocol but, being a regional economic integration organization rather than a State, felt it inappropriate to report.

6. The numbers indicated in italics within parentheses refer to the questions in the questionnaire on the implementation of the Protocol, e.g., (*14*) refers to question 14 in the questionnaire.

B. Main findings of the review

7. An analysis of the information provided in the completed questionnaires revealed that a majority of Parties undertook strategic environmental assessment (SEA) for plans and programmes. However, since the Protocol is relatively recent,[3] experience with its application was still relatively limited.

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[1] Albania, Armenia, Austria, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Netherlands, Norway, Poland, Romania, Slovakia, Spain and Sweden.

[2] See http://www.unece.org/env/eia/implementation/review_implementation.html.

[3] The Protocol was adopted in Kyiv in May 2003 and it entered into force in July 2010.

8. Possible weaknesses or shortcomings and areas for further improvement in the Protocol's implementation by Parties identified included:

(a) A frequent lack of definition and different understanding of several key terms used in the Protocol, such as "plans and programmes", "environmental, including health, effect", "small areas at local level", "minor modifications", "significant impact" and "reasonable alternatives";

(b) Difficulties related to the identification of plans and programmes that are within the field of application under article 4;

(c) Difficulties related to the determination of the contents and the level of detail of the environmental report, according to article 7 (para. 2 (b));

(d) Some confusion as to the contents of the final decision (art. 11) and in particular with respect to whether it should contain requirements relating to monitoring;

(e) A possible need to clarify the requirements and responsibilities regarding monitoring (art. 12);

(f) The need for bilateral agreements or other arrangements to facilitate transboundary consultations between Parties, in particular to address language-related issues, time frames, public participation and the interpretation of various terms;

(g) A continuing need to improve awareness and capacity in the implementation of the Protocol, including to clarify responsibilities of the authorities involved, e.g., with respect to consultations and public participation;

(h) A frequent lack of a central registry or database of national SEA procedures made reporting on SEAs by sector difficult.

II. Summary of responses to the questionnaire

A. Article 2: Definitions

9. Parties indicated whether the definitions for certain terms in their legislation were the same as those provided in article 2 of the Protocol.

10. For "plans and programmes" (*1*) (art. 2, para. 5), seven Parties (Albania, Bulgaria, Croatia, Germany, Hungary, Norway, and Sweden) responded positively. Eight Parties (Czech Republic, Denmark, Estonia, Finland, Lithuania, Romania, Slovakia and Spain) indicated that the definition was basically the same, but with some differences. Estonia's legislation, for example, referred to "strategic planning documents". Hungary had three definitions of the terms, with one of them being the exact translation of the definition in the Protocol and the other two providing more details, e.g., for plans and programmes co-financed by the EU. In Armenia the definition was not the same, and made no reference to a formal procedure required for its adoption. The Netherlands had no definition of the term in its legislation.

11. Several Parties (Bosnia and Herzegovina, Denmark, Lithuania, Norway, Poland, Romania and Spain) indicated that they had no definition of "environmental, including health, effect" (art. 2, para. 7) (*2*). Other Parties (Albania, Croatia, Czech Republic, Germany, Hungary, Slovakia and Sweden) affirmed that the definition in their legislation corresponded to that provided in the Protocol. Bulgaria, Estonia, Finland and the Netherlands reported that the definition was "similar but with some differences", although consistent with the Protocol. Norway noted that the term was indirectly defined within the criteria for deciding whether or not to conduct an SEA, and in the requirements for the

content of the SEA. In addition to the elements in the article 2, paragraph 7, Norway's definition referred to "aesthetics, risks and vulnerability" and to "the availability of space for children to play". Bulgaria's legislation referred to "any direct effect on the environment that may be caused by the implementation of a development proposal ..., including the effect on human health and safety, flora, fauna, soil, air, water, climate, landscape, historical monuments and other physical structures or the interaction among these factors".

12. In the majority of responding Parties (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Norway, Poland, Romania, Slovakia, Spain and Sweden) the definition of "the public" according to article 2, paragraph 8, was the same in their legislation as in the Protocol (*3*). Austria, Denmark, Estonia, Finland, Germany, Hungary and Lithuania indicated that there were some differences. For example, in Germany, the term was defined as an "individual or several natural or legal persons or associations of these persons." In Estonia, the SEA programme specified the persons and authorities that might be affected by or interested in the strategic planning documentation. In line with its legislation, each interested person, including also non-governmental organizations (NGOs) and persons whose rights might be affected by the plan or programme, can participate in SEA. Armenia and the Netherlands did not have a definition of the term in their legislation.

13. The majority of respondents (Armenia, Austria, Bosnia and Herzegovina, the Czech Republic, Denmark, Estonia, Finland, Germany, the Netherlands, Norway, Poland, Romania, Slovakia and Sweden) noted that there were no conditions for NGOs to be able to take part in the assessment procedure (*4*). In Spain, the NGOs should have as their main purpose environmental protection and be in operation for at least two years to participate.

B. Article 3: General provisions

14. Parties described their legislative, regulatory and other measures to implement the Protocol (article 3, para. 1) (*5*). Twelve Parties (Albania, Czech Republic, Denmark, Estonia, Finland, Germany, Netherlands, Poland, Romania, Slovakia, Spain and Sweden) had adopted a specific law on SEA, while in several other Parties provisions on SEA had been incorporated into other national laws. In addition to laws, 10 Parties also referred to regulations. Lithuania only mentioned its regulation. Austria reported that it had transposed the Protocol's requirements into its existing acts or passed new ones both at the federal and provincial levels. Denmark and Finland also noted that they had prepared implementation guidance.

15. According to article 3, paragraphs 6 and 7, Parties must ensure that persons can exercise their rights under the Protocol without any persecution or discrimination. Armenia, Austria, Finland, Poland and Romania reported that this right was granted by the Constitution. In Albania, Croatia, the Czech Republic, Denmark and Sweden it was reflected in specific laws related directly or indirectly to SEAs (*6*). Bulgaria, Estonia, Hungary, Lithuania, the Netherlands, Norway, Slovakia and Spain noted that this right was provided both in the Constitution and individual laws, notably in those reflecting the requirements of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). In Germany, the right was included in its legislation on SEA.

C. Article 4: Field of application

16. The respondents listed the types of plans and programmes that required SEA under their national legislation. In the majority of Parties this list covered the sectors as provided

in article 4, paragraph 2 (7). Others indicated additional fields of application such as gamekeeping (Czech Republic), health (Armenia), and noise action plans (Germany).

17. Sweden noted that the types of plans and programmes were specified in its environmental impact assessment (EIA) ordinance. Lithuania identified four cases when the assessment was obligatory: (a) depending on the potential significance of the effects of plans or programmes on the environment, as determined by their sector; (b) depending on the type, level and scale of the plan, with SEAs being obligatory for comprehensive territorial planning documents at the national, regional and district levels and major changes to these documents; (c) if plans or programmes had significant effects on established or potential "Natura 2000" sites; and (d) based on the judgement of the organizer of a plan or programme.

18. Fourteen respondents explained how their countries defined whether a plan or programme "set the framework for future development consent for projects" (article 4, para. 2) (8). In general, such plans and programmes foresaw implementation of activities included in annexes I and II to the Protocol, and contained provisions, conditions or criteria to be considered during their authorization and applied in their implementation, e.g., concerning the location, nature, size and operational conditions of these activities, the use of natural resources, etc. Other respondents (Austria, Bosnia and Herzegovina, Croatia, Lithuania, Netherlands and Spain) noted that they did not have a specific definition in this regard or that this was determined on a case-by-case basis.

19. Parties were asked to explain how the terms "plans and programmes ... which determine the use of small areas at local level" (art. 4, para. 4) were defined in their legislation (9). The majority of responding Parties, i.e., Albania, Austria, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Lithuania, Norway, Poland, Romania, Slovakia, Spain and Sweden, referred to a definition in their legislation. In Slovakia, this definition used the same wording as in the Protocol, which was then interpreted on a case-by-case basis. Austria noted that the terms usually referred to small-scale plans and programmes at the local level (e.g., certain local land-use plans) and that further guidance had been provided by some of the local (provincial) governments. In other Parties, such plans and programmes were considered to relate, for example, to the territory of a single municipality (Czech Republic) or to one commune (Poland). Norway referred to such plans and programmes as "detailed zoning plans". Lithuania made reference to the relevant EU legislation and implementation guidance that stipulated that these concepts could not be expressed in specific and concrete numeric values, but had to be decided on a case-by-case basis. The other respondents noted that their legislation did not provide a definition of the terms.

20. Most responding Parties (Armenia, Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Netherlands, Poland, Romania and Slovakia), as well as Bosnia and Herzegovina, indicated that they did not have legal definitions for how "minor modifications to a plan or programme" (art. 4, para. 4) were determined, and that this was done on a case-by-case basis (10) based on individual analysis and/or the application of screening criteria (e.g., Croatia, Hungary, Romania, Slovakia). Romania also pointed out that the modification in itself was not important to define, but its effects. Some other Parties (Albania, Austria, Lithuania, Spain and Sweden) referred to definitions in their legislation. Austria noted that its relevant law specified to which plans or programmes minor modifications were possible and that specific regulations defined different thresholds, e.g., depending on the land use. Moreover, some Austrian provinces provided explanations in this regard in "guidance notes". For Spain, minor modifications were changes that were "not essential but that could produce some differences in the characteristics of the environmental effects". Lithuania referred to the definition transposed from the relevant EU legislation, which stated that the main criterion should be the significance of the potential

effects of plans and programmes on the environment. Norway noted that "minor modifications" were those that did not alter the main characteristics of the plan or programme. In the Czech Republic, any modification, regardless of its extent importance, required screening.

D. Article 5: Screening

21. Parties described how they determined which other plans and programmes (i.e., not covered by art. 4, para. 2) were likely to have significant environmental, including health, effect and be subject to SEA according to article 4, paragraphs 3 and 4, and article 5, paragraph 1 (*11*). Fourteen Parties combined two approaches for the determination of significant effects, i.e., screening: case-by-case examination and specifying the types of plans and programmes. Germany, Poland, Romania and Sweden only determined this on a case-by-case basis, while Albania only by specifying the types of plans and programmes. Croatia considered which other plans should be subject to SEAs based on individual analysis and/or specific criteria.

22. The majority of Parties reported that their legislation foresaw opportunities for the public concerned to participate in screening and/or scoping of plans and programmes, which each Party "to the extent possible, shall endeavour to provide" in line with article 5, paragraph 3, and article 6, paragraph 3 (*13*). Armenia, Bosnia Herzegovina, Hungary and Poland reported that their legislation did not provide for such opportunities. Hungary noted, however, that there were opportunities for the public to communicate their opinion and make remarks during scoping, as the determination of the contents of the environmental evaluation and the contents of the plans and programmes themselves were made public. According to the German legislation, the public, NGOs and municipal authorities may be consulted in the scoping but not in the screening phase.

23. In most cases, Parties indicated that they used more than one method to allow for public participation during screening and/or scoping, i.e.: through sending written comments in relation to the plan or programme to the competent authority and/or to the local municipality; through providing answers to a questionnaire; and thorough taking part in a public hearing. Most commonly, the public was invited to address its written comments to the competent authority.

24. Parties described at which stage of the procedure their legislation required them to make the conclusions of the screening (screening decision) publicly available, and what information they should include (art. 5, para. 4) (*14*). In general, the conclusions of the screening decision were made publicly available: at the "conceptual/initial phase" (Albania); "without undue delay" (Slovakia); "in the screening phase" (Croatia); "within three days" of the decision (Bulgaria, Romania); "within 10 working days" of the decision (Lithuania); and "after the decision was made" (Austria, Denmark, Finland, Germany and Norway). Austria reported that some decisions were made publicly available after the decision had been taken, while others were made available together with the publishing of the planning report or planning documentation. Poland reported that its legislation did not require the issuance of the screening decision. However, if the authority responsible for preparing the draft screening document decided on the basis of such an analysis not to carry out an SEA, then it was obliged to inform the public without an undue delay of its decision. On the other hand, if the SEA was carried out, then the public was informed about each step and allowed to participate.

25. In the Czech Republic, if the plan and programme was subject to SEA, the screening decision (conclusion) should cover, among others, the contents and scope of the evaluation, including a requirement to draw up possible variants to the plan or programme, and the proposed procedure for assessing the plan or programme, including the holding of a public

hearing. In the opposite case, the competent authority was obliged to state the reasons for not requiring the assessment. In Romania, the responsible authority (or "beneficiary") had to publish the screening decision in the media, including information on the plan/programme; the legal basis for the SEA procedure; the measures taken to inform and involve the public during screening and whether the public sent any comments; the findings and conclusions of a special committee; the screening decision and the reasons for taking it; and information on the procedure for the public to comment the decision and on access to justice-related provisions. Slovakia reported that the information contained in the decision included a short description of the plan or programme, the outcome of the screening procedure, the comments received from the authorities and public concerned and how they were taken into account, how the criteria for screening were taken into account, specific proposed measures to be taken into account in the adoption procedure and during the time the plan would be "in operation", notice that the affected municipality had to make this decision publicly available, notice that such decision could be reviewed under the Civil Code of Justice, etc.

E. Article 6: Scoping

26. Article 6, paragraph 1, requires Parties to establish arrangements for the determination of the relevant information to be included in the environmental report (scoping) in accordance with article 7, paragraph 2. The majority of Parties indicated that to determine the relevant information in this regard they took into account the information specified in annex IV to the Protocol and the comments from the authorities concerned, and from the public concerned, if it had been consulted, and, that, in addition, this would be determined by the competent authority based on its expertise (*15*).

F. Article 7: Environmental report

27. Nearly all respondents indicated that "reasonable alternatives" in the context of the environmental report (art. 7, para. 2) were determined on a case-by-case basis (*16*). Bosnia and Herzegovina noted that it had no provisions for this; Croatia and Poland reported that the strategic impact study included alternative options that took into account the objectives and scope of the plan or programme in question; Hungary reported that the scope of environmental evaluations had to include a brief description of the plan or programme and the alternatives considered.

28. To ensure that the environmental reports are of sufficient quality (art. 7, para. 3), 15 Parties indicated that the competent authority checked the information provided and ensured that it included all the information required under annex IV to the Protocol (*17*). Albania noted, however, that it had no specific procedure or mechanism for this. Croatia reported that, in addition to their review by the competent authority, the draft plans and programmes were reviewed and the results of the strategic assessment study evaluated by an advisory expert committee. In addition, Austria, the Czech Republic and Finland referred to other means, such as the application of different guidelines to improve the quality of the reports. Romania noted that the aspects assessed included: compliance with annex IV; the presentation of alternatives; the integration of the public's comments; the quality and use of maps and diagrams; and the existence of an adéquate monitoring programme of the environmental effects.

G. Article 8: Public participation

29. All respondents (except for Bosnia Herzegovina) noted that the "timely public availability" of draft plans and programmes and the environmental report (art. 8, para. 2) were ensured both through public notices and the media (*18*). Armenia also made use of the Regional Environmental Information Centres (Aarhus Centres) for this purpose. In the Czech Republic, the draft plans or programmes and the environmental report were posted on official noticeboards, on the Internet and disseminated through at least one other means, such as in the press or on the radio. In Hungary, according to a Government decree, the publication had to take place in at least one national or local newspaper. Norway specified that a letter was sent to the concerned authorities, the public and NGOs.

30. Twelve responding Parties identified the "public concerned" referred to in article 8, paragraph 3 (*19*), by two means: based on the geographical location of the plans and programmes; and by making the information widely publicly available and letting the public concerned identify itself. Hungary also noted that, when defining the content and the level of detail of the environmental evaluation, the authority responsible for the plan or programme also identified the groups that could be concerned, and the procedure for informing them. Slovakia responded that the "public concerned" also depended on the specific plan or programme.

31. For 18 Parties, the public concerned had the opportunity to express its opinion on the draft plans and programmes and the environmental report "within a reasonable time frame" (art. 8, para. 4) (*20*) by sending written comments to the competent authority/focal point. In a number of cases they could also do this orally (10 Parties) and by attending public hearings (14 Parties).

32. Thirteen respondents indicated that the term "within a reasonable time frame" was not defined in their legislation, but that the time frame for each commenting period was defined by a number of days (*21*). A few Parties referred to legal requirements regarding the time frames: Albania and Croatia (30 days); Denmark (at least eight weeks); the Netherlands and Norway (six weeks). Germany, Hungary and Sweden reported that this was defined on a case-by-case basis. Bulgaria and Hungary noted that at least 30 days were provided for comments. In Lithuania, once the decision to carry out an SEA had been taken, the public had to be informed within 10 working days through the local (or regional or national) press and via the Internet; and once the SEA report and draft plan or programme was ready, the public had to be informed no later than 20 working days before its presentation to the public.

H. Article 9: Consultation with environmental and health authorities

33. Respondents were asked to describe the procedures required in their legislation for consulting the environmental and health authorities (art. 5, para. 2, art. 6, para. 2, and art. 9, para. 1) (*12*). Most respondents (Bulgaria, Croatia, Czech Republic, Estonia, Finland, Germany, Hungary, Lithuania, Norway, Poland, Romania, Slovakia and Spain) reported that both environmental and health authorities were consulted at every stage.

34. Croatia reported that in the screening phase, the competent body would consult the "bodies and/or persons designated by special regulations" and, when it deemed necessary, also the local authorities and other bodies, depending on the scope and other characteristics of the plan or programme. These bodies had 30 days to submit their opinions to the competent authority on the need for SEA. The competent body would also consult the relevant authorities on the content and scope of information to be assessed. The strategic impact study and the draft proposal of the plan or programme prepared by the competent

authority, taking into account the outcomes of the consultations, would then be submitted to a committee, established by a special regulation, and also to the other relevant bodies.

35. Finland reported that during all stages of the process several authorities (i.e., the centre for economic development, transport and the environment and, as appropriate, relevant local health, environmental and other authorities of the affected areas) were consulted, and that should the plan or programme have extensive regional repercussions, then the environment and health ministries would also be contacted.

I. Article 10: Transboundary consultations

36. If the plan or programme was likely to have significant transboundary effects, most Parties, as Party of origin, would inform the affected Party either during the scoping phase (11 Parties) and/or when the draft plan or programme and the environmental report had been prepared (10 Parties) depending on the type of project (*22*). The Czech Republic reported that generally the affected Party was informed when the environmental report had been prepared, although in some cases (especially for important national plans or programmes on energy or transport) the ministry of environment notified the neighbouring countries during the scoping phase. Hungary noted that it informed the affected Party at the same time as it carried out consultations on the draft of the plan or programme within its own country. In Slovakia, the affected Party was notified usually before scoping. Armenia noted that it had no practice with regard to transboundary consultations, nor any related legislative provisions, as of yet, but that these would be included in a new draft law.

37. Seventeen Parties indicated that they included the information required in article 10, paragraph 2, in the notification to the affected Party (*23*). For three of them (Estonia, Germany and Romania) the notification also contained additional information. Armenia did not respond to the question. Bosnia and Herzegovina reported that it had no such provisions in its environment law. In Estonia, the notification included: the name and description of the strategic planning document; information on the person preparing and adopting the document; a schedule for preparation of the document and the SEA; a short description of the likely environmental impacts resulting from the implementation of the document; and the time frame for responding to the notification and submission of comments.

38. Spain reported that the contents of the notification depended on the type of plan or programme. It also noted, together with a few other Parties (e.g., Estonia, Germany and Slovakia), that if the notification was made during the scoping phase, when the draft plan or programme and the environmental report were not yet available, these would be provided at a later stage. Slovakia also specified that the notification included initial information on the plan or programme, an indication that it might have a transboundary impact, a request to provide the Party of origin with information that should be assessed and notice that the information specified in article 10, paragraph 2, would be provided at a later stage.

39. As Parties of origin, 12 respondents indicated that their legislation did not include a "reasonable time schedule" for the transmission of comments from the affected Party (art. 10, para. 2) (*24*). Exceptions included: Albania, Croatia and the Czech Republic (30 days); the Netherlands and Norway (six weeks); and Denmark (8 weeks). Spain noted that while, in general, such a time frame was not included in legislation, it was included in the bilateral agreement with Portugal where a response deadline of 30 days was foreseen.

40. If the affected Party indicated that it wished to enter into consultations, detailed arrangements, including the time frame for consultations (art. 10, paras. 3 and 4) were agreed based on the time frames determined by the Party of origin in 10 of the responding countries (*25*). Others (e.g. Bulgaria, Lithuania, Poland, Slovakia, Spain) indicated that the time frames would be agreed between the concerned Parties on a case-by case basis. Spain

also referred to its bilateral agreement with Portugal for plans and programmes in which Portugal was the affected Party.

J. Article 11: Decision

41. Parties explained how they ensured that when a plan or programme was adopted, due account was taken of the conclusions of the environmental report, mitigation measures, and comments received in accordance with articles 8 to10 (art. 11, para. 1) (*26*). In the Netherlands, the competent authorities were required to justify the decisions taken on a plan or programme, including the way in which the environmental effects described in the environmental report were taken into account, along with preventive, mitigating and possible compensation measures, and how the outcomes of the consultations of the authorities and the public in its own country and, as needed, in the affected Party, were included. Poland referred to a written summary containing a justification of the choice of the plan or programme adopted in relation to the alternatives considered, as well as information on the manner in which the findings/conclusions of the environmental report, the opinions of the competent authorities (i.e., the environmental and sanitary inspection authorities), the comments and suggestions submitted, the results of the transboundary SEA, if conducted, and proposals for the method and frequency of monitoring the effects of the implementation of the provisions of the document were taken into consideration. Austria indicated that its legislation obliged the authorities concerned to explain in writing how the conclusions of the environmental report, comments, mitigation measures, monitoring measures and the reasons for adopting the plan or programme in the light of the alternatives had been taken into account.

42. There was some confusion among Parties regarding whether and to what extent the decision on the adoption of the plan and programme should address monitoring of the effects of the implementation of the adopted plan and programme under article 12. In Finland, decisions to approve a plan or programme had to include a justified opinion on how the environmental report, opinions and results of discussions between States were taken into account, and an outline of how these and various environmental considerations affected the content of the plan or programme and the choice between the various alternatives, and also an outline for monitoring.

43. Parties indicated how and when, as Party of origin, they informed their own public and authorities about the adoption of the plan (art. 11, para. 2) (*27*). In several Parties this was done by the competent authority once the decision to adopt the plan or programme was made, through the competent authority's website, public notices and official papers (Albania, Austria, Bulgaria, Czech Republic, Denmark, Germany, Hungary and Norway). In Bulgaria the initiator of the plan or programme was also held responsible for publishing information on their website. In Austria, local authorities also planned public information events.

44. Parties were asked how they informed the public and authorities of the affected Party about the decision to adopt a plan or programme (art. 11, para. 2) (*28*). Most respondents (Austria, Bulgaria, Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Norway, Slovakia and Sweden) reported that this was done by informing the point of contact in that country. In the Netherlands, the public (private persons, NGOs, private companies) and authorities of the affected Party that had submitted comments were informed individually about the decision on the final plan or programme. Poland reported that its national legislation did not clearly indicate how this procedural stage should be carried out, other than that the competent authority should forward the adopted document to the affected Party.

K. Article 12: Monitoring

45. Respondents described their legal requirements for monitoring the significant environmental, including health, effects of the implementation of the plans and programmes adopted (art. 12) (*29*). Several Parties (e.g., Croatia, Germany, Netherlands, Poland and Slovakia) reported that it was the authority that approved the plan or programme that was responsible for developing a monitoring programme and ensuring its implementation. On the other hand, in Bulgaria and Romania that responsibility lay mainly with the initiator or developer of the plan. Austria reported that its legal requirements complied with those of the Protocol that the planning authorities were generally responsible for monitoring, and that general guidance was available to support the monitoring process.

46. Spain noted that specific means to undertake monitoring were determined on a case-by-case basis. Some Parties (e.g., Germany and Hungary) reported that they could use existing monitoring systems and methods, data and information sources. Croatia described its environmental monitoring programme, which contained, notably: a description of the objectives of the plan or programme; indicators; a method of verifying the implementation of environmental protection measures; procedures in the case of unforeseen adverse effects' and funds required for the implementation of the environmental monitoring programme. Denmark reported that its procedure was aligned with article 12. Armenia did not reply and Bosnia Herzegovina reported that it had no provisions for monitoring.

L. Article 13: Policies and legislation

47. Most responding Parties indicated that they did not have national legislation on the application of the principles and elements of the Protocol to policies and legislation (art. 13, paras. 1–3) (*30*). Eight Parties (Austria, Czech Republic, Estonia, Finland, Germany, Netherlands, Norway and Sweden) said their national legislation did address this issue. For example, in Norway policies and legislation were required to undergo a sustainability assessment covering social, economic and environmental impacts. Equally, in Estonia, significant impacts, including environmental, social and economic impacts, of draft acts and draft regulations were to be assessed during their elaboration. In Austria, federal laws and regulations, international agreements and certain projects of significant financial weight were subject to an environmental assessment. In Germany, according to the constitution, all governmental and legislative bodies had to ensure that environmental, including health, concerns would thoroughly be taken into account when preparing proposals for policies and legislation.

III. Practical application of the Protocol during the period 2010–2012

A. Domestic and transboundary implementation

1. Authority responsible for carrying out SEAs

48. Responding Parties indicated which competent authorities were responsible for carrying out the SEA procedure in their countries *(32)*. Fifteen Parties (Austria, Croatia, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Lithuania, Netherlands, Norway, Poland, Slovakia, Spain and Sweden) reported that the competent authority was different at different levels (national, regional, local). Austria, Croatia, Denmark, Estonia, Finland, Germany, Hungary, Norway, Poland, Spain and Sweden reported that the authorities differed for different types of plans and programmes. Six Parties (Bulgaria,

Croatia, Denmark, Estonia, Romania and Slovakia) reported that the authorities differed depending on whether the procedure was domestic or transboundary.

2. Sub-chapter on potential transboundary effects

49. Fifteen respondents said that their SEA documentation only included a specific sub-chapter on information on potential transboundary effects when there were such impacts (*33*). However, some Parties (e.g., Albania, Slovakia and Poland) indicated that such a sub-chapter was always included in the SEA documentation.

B. Cases during the period 2010–2012

50. Most Parties found it difficult to report, in particular, on domestic SEA procedures initiated during the period 2010–2012 and to list them by sectors referred to in article 4, paragraph 2. This was commonly due to the decentralization of the domestic SEA procedures, which involved authorities at different levels of government, and due to the absence of a central registry of SEA cases and related data (*34*).

51. The table below provides an approximate/estimated number of cases for each responding Party.

Party	*Transboundary SEAs as Party of origin*	*National (approximate)*	*Total (approximate)*
Albania	—	30	30
Austria	6	438	444
Bulgaria	—	1 406	1 406
Croatia	—	—	4
Czech Republic	6	487	493
Denmark	3	200	203
Estonia	1	200	201
Finland	7	4 530	4 537
Hungary	—	370	370
Lithuania	—	536	536
Netherlands	—	—	75
Norway	5	315	320
Poland	8	—	8
Romania	3	58	61
Slovakia	1	568	569
Spain (nationally)	2	27	29
Sweden	5	400	405

52. Eight Parties (Bulgaria, Czech Republic, Denmark, Finland, Hungary, Lithuania, Poland and Spain) provided approximate numbers of their domestic and transboundary SEA procedures for each of the sectors listed in article 4, paragraph 2, individually. Others provided figures for clusters of several sectors or reported on the procedures only on a general level. This made it difficult to summarize in a detailed manner the information on SEAs by sector.

53. Based on the figures made available, during the period 2010–2012, the vast majority of SEAs initiated by the responding Parties were in the field of land use or town and country planning (at the national, regional and local levels); the other major sectors being regional development, energy, water management, waste management and transport. In addition, some Parties reported on SEAs initiated in the following other sectors: telecommunications (Lithuania); industry, including mining (Lithuania, Romania and Spain); agriculture and fisheries (Hungary, Lithuania and Spain); forestry (Lithuania, Romania and Spain); and large-scale construction (Lithuania). Armenia reported that, in the period following its ratification of the Protocol in January 2011, it had initiated approximately 50 domestic EIA procedures, and that part of the activities assessed were also subject to SEA based on their nature and scale. The sectors it referred to included mining, agriculture and large-scale construction.

C. Experience with the strategic impact assessment procedure

54. Parties were asked to indicate whether they had had practical experience in implementing the Protocol, and whether this had supported the integration of environmental, including health, concerns into the development of plans and programmes (*35*). Albania, Austria, Bulgaria, the Czech Republic, Denmark, Estonia, the Netherlands, Norway, Poland, Romania, Slovakia and Spain responded in the affirmative, stating that SEA and the conclusions of the environmental report had influenced the planning process, and at times led to changes in the original plans or programmes or in the decision on their adoption. In general, the opportunity to assess alternative strategies or directions for a plan or programme and the incorporation of the views of relevant authorities and the public had led to better integration of environmental considerations, e.g., through the introduction of additional measures to prevent, mitigate and reduce adverse impacts and indicators for monitoring. Germany noted that it was still too early to determine the impact of SEAs, although it seemed to be positive. Several Parties illustrated their responses with examples:

(a) Bulgaria referred to its draft National Renewable Energy Action Plan (2011–2020), which included restrictions and prohibitions for developing renewable energy projects in specific areas as a result of SEA;

(b) Denmark provided as an example a wind farm that had not been established in a given location as a result of a SEA, because of concerns related to noise;

(c) Finland highlighted that the most crucial contribution of SEAs to the planning processes had been the importance of cooperation and systematic assessment;

(d) Hungary provided the example of the village of Pilisszentkereszt, where the entire settlement development plan had been turned down further to the environmental assessment. Hungary also reported how the measures for the prevention, reduction or mitigation of adverse impacts identified during SEAs of settlement development plans had been incorporated into its regulations (local construction code), serving to ensure that these environmental concerns would be considered in the planning phase for any subsequent plan of that kind;

(e) The Netherlands referred to its national policy strategy on pipelines within which certain pipeline routes had been altered or dropped because of environmental reasons (mostly safety related);

(f) In Romania, a master plan for coastal protection and rehabilitation was modified further to an SEA to protect the existing Natura 2000 site.

55. Most Parties indicated that they had not experienced substantial difficulties in interpreting particular terms or particular articles of the Protocol (*36*). However, the following difficulties were noted by a number of Parties:

(a) The identification of plans and programmes that are within the field of application (under article 4) (Austria);

(b) The determination of the contents and the level of detail of the environmental report (Austria, Estonia) (article 7, para. 2 (b));

(c) Specific criteria for the likely significant transboundary environmental, including health, effects (Norway);

(d) Lack of clear legal definitions of some terms (such as "significant impact" or "reasonable alternatives") (Poland);

(e) Lack of a clear definition for "small areas at local level" and "minor modifications" (Slovakia);

(f) Hungary noted a number of specific difficulties concerning the interpretation of the following terminology: (i) protection of the public against harassment (art. 3, paras. 6 and 7); (ii) "relevant information" (art. 6, para. 3); (iii) "reasonable time frame" (art. 8, para. 4); (iv) "significant environmental effects"; and (v) "environmental, including health, effect" (art. 2, para 7).

56. Germany noted the value of bilateral agreements to collaborate and find common solutions for the practical implementation of transboundary procedures (as it is doing with France, the Netherlands, and Poland) while Hungary emphasized the value of guidelines.

57. Parties were also asked to provide examples of applying the Protocol in practice, including lessons learned. Some of the examples provided are outlined below (*37*). Hungary was the only responding Party to express its willingness to provide a case study to be made available on the Convention website. The case study relates to impacts on a Natura 2000 area of the Long-term Plan of the National Express and Main Road Network and the Long-term Development Plan.

1. Monitoring

58. A few countries provided specific examples of monitoring that they had carried out according to article 12. These concerned: waste management plans for the city of Vienna (Austria); Bulgaria's town and country planning, land use plans, municipality master plans and detailed spatial plans, national "operational" programmes for transport, environment, competitiveness, regional development, fisheries and agriculture, and national and regional transport plans, strategies and programmes; Germany's maritime spatial plans; and Hungary's transport plan. A number of other countries described their national legislation and procedures on monitoring (e.g., the Czech Republic and Lithuania), or referred to monitoring of plans and programmes as a standard procedure (Denmark) or as a legal obligation (e.g., Poland and Spain). Sweden referred to its experience in applying existing general monitoring schemes. The Netherlands noted that it lacked national registers regarding monitoring of plans. Romania stated that it had no experience in monitoring yet.

2. Translation

59. Some Parties described how they had addressed the question of translation, which was not specified in the Protocol. Austria, as the Party of origin usually translates the draft plan or programme and all or part of the environmental report into the language of the affected Party. As the affected Party, Austria requests the documents in German, but may sometimes also accept documents in English. Croatia, Denmark and the Netherlands

reported that they only translated (if necessary) the summary documentation and the chapter on transboundary impacts of the environmental report. Germany emphasized the importance, cost and time needed for effective translations and that this should be dealt with in bilateral agreements.

3. Public participation

60. A number of Parties described their experience in transboundary public participation according to article 10, paragraph 4. The examples provided included the following:

(a) Austria noted that, as affected Party, it was sometimes difficult to grant the Austrian public the same opportunities as the public in the Party of origin due to time constraints, e.g., for indicating whether or not to participate in the transboundary procedure and for submitting comments;

(b) Bulgaria reported on its experience in relation to the master plan for the protection and rehabilitation of the Romanian coastal zone. As an affected Party, it had published the material received from the Romanian Environment Ministry (the SEA report and draft Master Plan in English) on the competent authority's website for public consultations for a period of 30 days;

(c) Romania reported on its positive experience in public participation in two transboundary cases where it was the Party of origin, and Hungary and Serbia were the affected Parties. In both cases the public had been satisfied with the way Romania had dealt with the public's queries;

(d) Finland highlighted the effective cooperation between countries and the effectiveness of public participation, but noted that often authorities seemed more interested in participating in SEA procedures than the general public;

(e) Germany referred to transboundary procedures in connection with Poland's nuclear power programme. As affected Party, it had published the draft programme and an abstract of the environmental report on the websites of the competent authorities at the federal and regional levels for three months. As a result, more than 50,000 German citizens and NGOs as well as several German authorities had expressed their opinions on the draft;

(f) In the Netherlands, SEAs for a spatial integration plan and an infrastructure plan had involved stakeholder dialogue with representatives from the most important stakeholder groups (companies, local communities, etc.). These stakeholders were periodically consulted during the scoping process and in the preparation of the SEA report.

D. Cooperation between parties

61. A few Parties (e.g., Czech Republic, Estonia, Germany, Netherlands and Spain) provided successful examples of how they had overcome difficulties arising from different legal systems in neighbouring countries (*38*), mainly highlighting the value of bilateral agreements. Estonia noted the importance of early consultation with neighbouring countries. For Austria, a cooperative attitude between the authorities and stakeholders was required.

E. Experience regarding guidance

62. Most Parties (Albania, Austria, Bosnia and Herzegovina, Croatia, Denmark, Estonia, Finland, Hungary, Lithuania, Netherlands, Norway, Poland, Romania and Sweden) reported that they were either not aware of the use of the *Resource Manual to Support Application of*

the Protocol on Strategic Environmental Assessment (ECE/MP.EIA/17),[4] or that it was not used in their country (*39*). Armenia noted that the Resource Manual was being translated into Armenian. Germany highlighted the value of the Resource Manual, particularly for transboundary SEAs.

63. Several Parties (Austria, Estonia, Finland, Germany, Norway, Poland, Spain and Sweden) reported that they had prepared guidance on SEA for the public and made it available on the Internet, most commonly on the website of the environmental authority (*40*). In Finland, the guidance made available by the environment ministry included notably: a web-based SEA toolkit; an electronic question-and-answer package and other basic information about SEA; guidelines on impact assessment in land-use planning; and several other publications and guidance material on public participation and impact assessment in land-use planning. Austria had made available a web-based SEA toolkit and a dedicated website for SEA issues. Poland's General Directorate for Environmental Protection had published guidance and pamphlets on SEAs and public participation which had been of valuable assistance both for the public and administrative authorities.

64. Except for Finland and Germany, no other Party indicated that they provided support to associations, organizations or other groups that promote the Protocol (*41*). In Germany, funding was provided to the biannual congress of the German EIA Association, which addresses questions of EIA and SEA and is composed of consultants, universities and authorities — mainly from Germany and Austria. Finland reported that the environment ministry had an allowance in its annual budget for distributing grants to various environmental and other associations (although not specifically to promote the Protocol, but for more general purposes, such as public participation in environmental matters).

65. Parties were asked whether they had difficulties implementing the procedures defined in the Protocol (*42*). In this respect, most Parties reported not to have had any major difficulties. Austria stated that for some authorities it was a challenge to integrate SEA elements into the existing planning processes. Hungary reported that the language and the "project-like logic" of the Protocol could be improved to be better adapted for application at the level of programmes.

F. Awareness of the Protocol

66. Several Parties (Albania, Estonia, Finland, Germany, Hungary, Norway, Slovakia and Sweden) considered that there was a need to further improve the application of the Protocol in their country (*43*). Germany noted that the Protocol on SEA was still relatively new and that the need for additional measures to improve its application should be evaluated based on the practical experience gained. Slovakia considered that seminars, workshops, leaflets and information for authorities, SEA experts and the general public could help to improve application of the Protocol. Hungary felt that the application of the Protocol could be improved by the provision of guidelines and also by amending legal regulations to clarify ambiguous terms. Norway suggested that improved guidance was needed, in particular to clarify responsibilities of the competent authorities. Sweden reported that it was currently reviewing chapter 6 of its Environmental Code in order to make the requirements on EIA and SEA clearer and more streamlined. Austria considered that its concerned authorities were fully aware of all the requirements of the Protocol and in the past few years had developed a more positive attitude towards SEA. Among difficulties, Austria noted certain duplication with the EIA procedures regarding (local) spatial

[4] Online publication available from http://www.unece.org/env/eia/sea_manual/welcome.html.

planning. Some programmes were also more challenging to assess, e.g., regional programmes involving green zones.

G. Suggested improvements to the report

67. Most respondent had no suggestions for improving the report on the implementation of the Protocol, the present report being the first one prepared (*44*). However, Germany indicated that it did not see the value of providing practical case studies and experience (under part II of the questionnaire). The Netherlands felt that there was some overlap between the questions (in particular in its part I). Norway identified some overlap in the questions in part II, and also noted that at this early stage of applying the Protocol there was little information to share regarding practical experience, therefore, that section could be shortened.